

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

BERNARD STEVENS-BEY and
DAVID L. WELLS,

Plaintiffs,

CASE NO: 2:06-CV-10508

V.

DISTRICT JUDGE DENISE PAGE HOOD
MAGISTRATE JUDGE STEVEN D. PEPE

PATRICIA CARUSO and
HUGH WOLFENBARGER,
in their individual capacities,

Defendants.

/

**ORDER DENYING PLAINTIFF WELLS' MOTION TO STAY THESE PROCEEDINGS
OR, IN THE ALTERNATIVE, A MOTION FOR CONTINUANCE (Dkt. #43)**

Plaintiff Bernard Stevens-Bey and Plaintiff David L. Wells are prisoners in custody of the Michigan Department of Corrections (MDOC). On February 7, 2006, they filed this action under 42 U.S.C. § 1983 against Patricia Caruso and Hugh Wolfenbarger, in their individual capacities (Plaintiffs' Complaint, Dkt. #1). Ms. Caruso is the Director of the MDOC and Mr. Wolfenbarger is the Macomb County Correctional Facility (MRF) Warden (Defendants' Motion for Summary Judgment, Dkt. #38, p. 1). Plaintiffs state that they are non-smokers suffering from serious medical conditions associated with breathing (Plaintiffs' First Amended Complaint, Dkt. #4, p. 3), and that Defendants have failed to protect Plaintiffs from involuntary exposure to environmental tobacco smoke (ETS) in violation of the Eighth Amendment. They seek declaratory and injunctive relief, as well as an unspecified amount of monetary damages, for present and future injury (Dkt. #4, p. 2). Plaintiffs also make a state law claim under the

Michigan Clean Indoor Air Act, MCL §§ 33.12601, *et seq.*, which requires certain measures to minimize the effect of indoor smoke.

On August 20, 2007, Plaintiff Wells filed a Motion for Appointment of a Legal Assistant (Dkt. #33). This motion was denied in an August 31, 2007, Report and Recommendation (Dkt. #36). On September 25, 2007, Plaintiff Wells filed a Motion to Stay Proceedings until his motion for appointment of a legal assistant could be decided (Dkt. #43). Because the undersigned has already denied Plaintiff Wells' motion and because Plaintiff Wells has already filed a response to Defendants' Motion for Summary Judgment (Dkt. #46), Plaintiff's Motion to Stay Proceedings is **DENIED** as moot.

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Any objections are required to specify the part of the Order to which the party objects and state the basis of the objection. Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge. Within ten (10) days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall be not more than twenty (20) pages in length unless by motion and order such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections.

SO ORDERED.

Date: October 30, 2007
Flint, Michigan

s/Steven D. Pepe
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on October 30, 2007, I electronically filed the foregoing paper with the Clerk Court using the ECF system which will send electronic notification to the following: Christine M. Campbell, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Bernard Stevens, #166360, Mound Correctional Facility, 17601 Mound Rd., Detroit, MI 48212, , David Wells, #125291, Macomb Regional Facility, 34625 26 Mile Rd., New Haven, MI 48048

s/ James P. Peltier

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